

Original sponsors: Ulmer, Hudson,
Grussendorf, et al.

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2

CS FOR HOUSE BILL NO. 237 (Judiciary)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

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For an Act entitled: "An Act relating to physical and sexual offenses

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against children; amending the definitions of the

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crimes of murder in the second degree and assault in

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the first degree; relating to the joinder of offenses

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of the same or similar character and the admissibil-

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ity in a criminal proceeding of evidence of prior

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acts; amending Rule 8(a) of the Alaska Rules of

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Criminal Procedure; amending Rule 404(b) of the

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Alaska Rules of Evidence; and providing for an effec-

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tive date."

16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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* Section 1. AS 11.41.110(a) is amended to read:

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(a) A person commits the crime of murder in the second degree if

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(1) with intent to cause serious physical injury to another

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person or knowing that the conduct is substantially certain to cause

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death or serious physical injury to another person, the person causes

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the death of any person;

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(2) the person knowingly engages in conduct [INTENTIONALLY

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PERFORMS AN ACT] that results in the death of another person under

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circumstances manifesting an extreme indifference to the value of

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human life; or

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(3) acting either alone or with one or more persons, the

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person commits or attempts to commit arson in the first degree, kid-

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napping, sexual assault in the first degree under AS 11.41.410(a)(1)

1 or (2), sexual assault in the second degree, burglary in the first
2 degree, escape in the first or second degree, or robbery in any degree
3 and, in the course of or in furtherance of that crime, or in immediate
4 flight from that crime, any person causes the death of a person other
5 than one of the participants.

6 * Sec. 2. AS 11.41.200(a) is amended to read:

7 (a) A person commits the crime of assault in the first degree if

8 (1) that person recklessly causes serious physical injury
9 to another by means of a dangerous instrument;

10 (2) with intent to cause serious physical injury to another,
11 the person causes serious physical injury to any person; or

12 (3) the person knowingly engages in conduct [INTENTIONALLY
13 PERFORMS AN ACT] that results in serious physical injury to another
14 under circumstances manifesting extreme indifference to the value of
15 human life.

16 * Sec. 3. AS 11.41.434(a) is amended to read:

17 (a) An offender commits the crime of sexual abuse of a minor in
18 the first degree if

19 (1) being 16 years of age or older, the offender engages in
20 sexual penetration with a person who is under 13 years of age or aids,
21 induces, causes, or encourages a person who is under 13 years of age
22 to engage in sexual penetration with another person; [OR]

23 (2) being 18 years of age or older, the offender engages in
24 sexual penetration with a person who is under 18 years of age and who

25 (A) is entrusted to the offender's care by authority of
26 law; or

27 (B) is the offender's son or daughter, including an
28 illegitimate or adopted child, or a stepchild; or

29 (3) being 18 years of age or older, the offender engages in

1 sexual penetration with a person who is under 16 years of age, and the
2 victim at the time of the offense is

3 (A) residing as a member of the social unit in the
4 same household as the offender and the offender is in a position
5 of authority over the victim; or

6 (B) temporarily entrusted to the offender's care.

7 * Sec. 4. AS 11.41.436(a) is amended to read:

8 (a) An offender commits the crime of sexual abuse of a minor in
9 the second degree if

10 (1) being 16 years of age or older, the offender engages in
11 sexual penetration with a person who is 13, 14, or 15 years of age and
12 at least three years younger than the offender, or aids, induces,
13 causes or encourages a person who is 13, 14, or 15 years of age and at
14 least three years younger than the offender to engage in sexual pene-
15 tration with another person;

16 (2) being 16 years of age or older, the offender engages in
17 sexual contact with a person who is under 13 years of age or aids,
18 induces, causes, or encourages a person under 13 years of age to
19 engage in sexual contact with another person;

20 (3) being 18 years of age or older, the offender engages in
21 sexual contact with a person who is under 18 years of age and who

22 (A) is entrusted to the offender's care by authority
23 of law; or

24 (B) is the offender's son or daughter, including an
25 illegitimate or adopted child, or a stepchild; [OR]

26 (4) being 16 years of age or older, the offender aids,
27 induces, causes, or encourages a person who is under 16 years of age
28 to engage in conduct described in AS 11.41.455(a)(2) - (6); or

29 (5) being 18 years of age or older, the offender engages in

1 sexual contact with a person who is under 16 years of age, and the
2 victim at the time of the offense is

3 (A) residing as a member of the social unit in the
4 same household as the offender and the offender is in a position
5 of authority over the victim; or

6 (B) temporarily entrusted to the offender's care.

7 * Sec. 5. AS 12.55.025(e) is amended to read:

8 (e) Except as provided in (g) and (h) of this section, if the
9 defendant has been convicted of two or more crimes, sentences of
10 imprisonment shall run consecutively. If the defendant is imprisoned
11 upon a previous judgment of conviction for a crime, the judgment shall
12 provide that the imprisonment commences at the expiration of the term
13 imposed by the previous judgment.

14 * Sec. 6. AS 12.55.025 is amended by adding a new subsection to read:

15 (h) If the defendant has been convicted of two or more crimes
16 under AS 11.41.200 - 11.41.250 or 11.41.410 - 11.41.455 in which the
17 victim or victims of the crimes were minors and the judgment on any of
18 the convictions has not been entered, the court shall impose some
19 consecutive period of imprisonment for each conviction.

20 * Sec. 7. AS 12.55.155(c) is amended to read:

21 (c) The following factors shall be considered by the sentencing
22 court and may aggravate the presumptive terms set out in AS 12.55.125:

23 (1) a person, other than an accomplice, sustained physical
24 injury as a direct result of the defendant's conduct;

25 (2) the defendant's conduct during the commission of the
26 offense manifested deliberate cruelty to another person;

27 (3) the defendant was the leader of a group of three or
28 more persons who participated in the offense;

29 (4) the defendant employed a dangerous instrument in

1 furtherance of the offense;

2 (5) the defendant knew or reasonably should have known that
3 the victim of the offense was particularly vulnerable or incapable of
4 resistance due to advanced age, disability, ill health, or extreme
5 youth or was for any other reason substantially incapable of exercis-
6 ing normal physical or mental powers of resistance;

7 (6) the defendant's conduct created a risk of imminent
8 physical injury to three or more persons, other than accomplices;

9 (7) a prior felony conviction considered for the purpose of
10 invoking the presumptive terms of this chapter was of a more serious
11 class of offense than the present offense;

12 (8) the defendant's prior criminal history includes conduct
13 involving aggravated or repeated instances of assaultive behavior;

14 (9) the defendant knew that the offense involved more than
15 one victim;

16 (10) the conduct constituting the offense was among the most
17 serious conduct included in the definition of the offense;

18 (11) the defendant committed the offense pursuant to an
19 agreement that the defendant either pay or be paid for the commission
20 of the offense, and the pecuniary incentive was beyond that inherent
21 in the offense itself;

22 (12) the defendant was on release under AS 12.30.020 or
23 12.30.040 for another felony charge or conviction or for a misdemeanor
24 charge or conviction having assault as a necessary element;

25 (13) the defendant knowingly directed the conduct constitut-
26 ing the offense at an active officer of the court or at an active or
27 former judicial officer, prosecuting attorney, law enforcement offi-
28 cer, correctional employee, fire fighter, emergency medical techni-
29 cian, paramedic, ambulance attendant, or other emergency responder

1 during or because of the exercise of official duties;

2 (14) the defendant was a member of an organized group of
3 five or more persons, and the offense was committed to further the
4 criminal objectives of the group;

5 (15) the defendant has three or more prior felony convic-
6 tions;

7 (16) the defendant's criminal conduct was designed to obtain
8 substantial pecuniary gain and the risk of prosecution and punishment
9 for the conduct is slight;

10 (17) the offense was one of a continuing series of criminal
11 offenses committed in furtherance of illegal business activities from
12 which the defendant derives a major portion of the defendant's income;

13 (18) the offense was a crime

14 (A) specified in AS 11.41 and was committed against a
15 spouse, a former spouse, or a member of the social unit comprised
16 of those living together in the same dwelling as the defendant;
17 or

18 (B) specified in AS 11.41.410 - 11.41.460 and was
19 committed against a minor, and the defendant has engaged in the
20 same or similar conduct involving the same or another victim who
21 was a minor;

22 (19) the defendant's prior criminal history includes an
23 adjudication as a delinquent for conduct that would have been a felony
24 if committed by an adult;

25 (20) the defendant was on furlough under AS 33.30 or on
26 parole or probation for another felony charge or conviction;

27 (21) the defendant has a criminal history of repeated in-
28 stances of conduct violative of criminal laws, whether punishable as
29 felonies or misdemeanors, similar in nature to the offense for which

1 the defendant is being sentenced under this section;

2 (22) the defendant knowingly directed the conduct constitut-
3 ing the offense at a victim because of that person's race, sex, color,
4 creed, physical or mental disability, ancestry, or national origin;

5 (23) the defendant is convicted of an offense specified in
6 AS 11.71 and the offense involved the delivery of a controlled sub-
7 stance under circumstances manifesting an intent to distribute the
8 substance as part of a commercial enterprise;

9 (24) the defendant is convicted of an offense specified in
10 AS 11.71 and the offense involved the transportation of controlled
11 substances into the state;

12 (25) the defendant is convicted of an offense specified in
13 AS 11.71 and the offense involved large quantities of a controlled
14 substance;

15 (26) the defendant is convicted of an offense specified in
16 AS 11.71 and the offense involved the distribution of a controlled
17 substance that had been adulterated with a toxic substance.

18 * Sec. 8. Rule 8(a), Alaska Rules of Criminal Procedure, is amended to
19 read:

20 (a) JOINDER OF OFFENSES. Two or more offenses may be charged in
21 the same indictment or information in a separate count for each of-
22 fense if the offenses charged, whether felonies, misdemeanors or both,

23 (1) are of the same or similar character and it can be
24 determined before trial that it is likely that evidence of one charged
25 offense would be admissible to prove another charged offense.

26 (2) [OR] are based on the same act or transaction, or

27 (3) are based on two or more acts or transactions connected
28 together or constituting parts of a common scheme or plan.

29 * Sec. 9. Rule 404(b), Alaska Rules of Evidence, is amended to read:

1 (b) Other Crimes, Wrongs, or Acts.

2 (1) Evidence of other crimes, wrongs, or acts is not admissible
3 to prove the character of a person in order to show that he acted in
4 conformity therewith. It may, however, be admissible for other pur-
5 poses, such as proof of motive, opportunity, intent, preparation,
6 plan, knowledge, identity, or absence of mistake or accident.

7 (2) In a prosecution for a crime involving a physical or sexual
8 assault or abuse of a minor, evidence of other acts by the defendant
9 toward the same or another child is admissible to show a common scheme
10 or plan if admission of the evidence is not precluded by another rule
11 of evidence and if the prior offenses

12 (i) are not too remote in time;

13 (ii) are similar to the offense charged; and

14 (iii) were committed upon persons similar to the pros-
15 ecuting witness.

16 * Sec. 10. Section 9 of this Act is retroactive and applies

17 (1) to evidence of acts committed before the effective date of
18 this Act; and

19 (2) in trials involving offenses committed before the effective
20 date of this Act.

21 * Sec. 11. This Act takes effect immediately under AS 01.10.070(c).